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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------|----------------------------|
| 10/585,966 | 07/13/2006 | Thorsten Cassier | 3793 | 8881 |
| 7590 | 05/01/2008 | | | |
| Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743 | | | | EXAMINER ELHILO, EISA B |
| | | | ART UNIT 1796 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/585,966 | CASSIER ET AL. | |
| | Examiner | Art Unit | |
| | Eisa B. Elhilo | 1796 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 July 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/13/2006</u> . | 6) <input type="checkbox"/> Other: _____ . |

Claims 1-20 are pending in this application.

DETAILED ACTION

Claim Objections

1. Claims 4, 5, 11, 12 and 20 objected to because of the following informalities:

Claim 4, in lines 2 and 6, recites “so-dium” and “selec-ted”.

Claim 4, in line 2, recites the term “from among”. This term should be replaced with the term --from the group consisting of--.

Claim 5, in line 2, recites “bro-mate”.

Claim 11, in line 3, recites “TE-TRASODIUM”.

Claim 11, in line 3, recites the term “from among”. This term should be replaced with the term --from the group consisting of--.

Claim 20, in lines 3-4, recites “thi-ckener” and aque-ous”. These terms in the claims should be corrected. Appropriate correction is required.

Claim 12 recites thickener polymers selected from a table. These thickener polymers should be recited in a Markush language (selected from the group consisting of) followed by the claimed species of the polymers without chemical designation such as acrylates copolymer, acrylates/C10-30 alkyl, acrylate crosspolymer, acrylates/acrylamides copolymers and/or -----.

Appropriate correction is required in order to put the claim in a proper form.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 7-14, 17-18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Dias (US 6,540,791 B1).

Dias (US' 791 B1) teaches a hair bleaching composition comprising hydrogen peroxide and bromate as oxidizing agents in the amounts of 0.1 to 6% which within the claimed amounts as claimed in claims 1, 4-5 and 7 (see col. 5, lines 25-46), ethylenediaminetetraacetic acid as peroxide stabilizer as claimed in claim 8 (see col. 8, lines 46-47), etidronic acid estabilizer in the amount of 0.1 % and 0.2% as claimed in claims 9 and 11 (see cols. 51-52, The tables), stabilizers of a combination of disodium pyrophosphate and etidronic acid as claimed in claim 10 (see col. 9, lines 17-18), thickener of acrylic copolymers in the amounts of 0.5 to 5% as claimed in claims 12-13 (see col. 15, lines 14-41), water in the amount of 50 to 98% as claimed in claim 14 (see 45, lines 1-19), cationic polymers as claimed in claim 17 (see col. 26, line 8) and amphoteric compound of lauryamidopropyltrimethylcarboxymethyl betaine as claimed in claim 18 (see col. 13, lines 57-50). Dias (US' 791 B1) also teaches 2-component preparation as claimed in claim 20 (see col. 49, lines 1-12), wherein the composition is in the form of a gel as claimed in claim 2 (see col. 49, line 35). Dias teaches all the limitations of the instant claims. Hence, Dias anticipates the claims.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 5-6 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias (US 6,540,791 B1).

Dias (US' 791 B1) teaches a hair bleaching composition having a pH in the range of 5-11 which covered the claimed range as claimed in claim 5 and overlapped with the claimed range as claimed in claim 6 (see col. 48, lines 50-51).

The instant claims differ from the reference by reciting a composition having basic and acidic pH values.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a composition by optimizing the pH ranges of the composition to arrive at the claimed invention because the reference clearly teaches a composition having similar ingredients in the claimed amounts and wherein the composition has a pH in the ranges of 5 to 11 (see col. 48, lines 50-51) that includes acidic and basic regions and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claims 3 and 19, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a transparent composition with the claimed range of viscosity to arrive at the claimed invention. Such a modification would have been obvious because Dias (US' 791 B1) clearly teaches a composition having ingredients similar to those claimed and wherein the composition may be in a gel form as described above. The composition also comprises viscosity control agents (see col. 47, lines 37-38) and, thus, a person of the ordinary skill in the art would expect such a composition to have physical properties of transparency and viscosity similar to those claimed in the absence of contrary.

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4 Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias (US 6,540,791 B1) in view of Legrand et al. (US 2004/0034944 A1).

The disclosure of Dias (US' 791 B1) as described above, teaches an oxidative hair composition comprising solvents of polyhydric alcohols (see col. 45, lines 1-6).

The instant claims differ from the reference by reciting 1,2,3-propane-triol (glycerol) as specific species of the genus polyhydric alcohols.

Legrand et al. (US' 944 A1) in analogous art of hair bleaching formulation, teaches a composition comprising glycerol (1,2,3-propae-triol) in the amounts of 0.5 to 20% as claimed in claims 15-16 (see page 22, paragraphs, 0232-0233).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made to formulate a bleaching composition that comprises glycerol (1,2,3-propane-triol) as an organic solvent to arrive at the claimed invention because Dias as a primary reference suggests the use of polyhydric alcohols as organic solvents in the composition. Legrand et al. as a secondary reference clearly teaches the claimed species of glycerol as organic solvent in a bleaching composition and, thus, a person of the ordinary skill in the art would select any of the species of the genus taught by reference, including those of the claims, because an ordinary artisan would have the reasonable expectation that any of the species of the genus would have similar properties and thus, the same use as the genus as a whole, absent unexpected results.

Conclusion

5 The references listed on from PTO-1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pyon Harold can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eisa B Elhilo/
Primary Examiner, Art Unit 1796
April 26, 2008

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